

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
CASE NO. DNCW3:17CR161
(Financial Litigation Unit)
DEREK KENDALL BATTLE,)
Defendant,)
and)
ELITE HOME HEALTH CARE, INC.,)
Garnishee.)

ORDER OF CONTINUING GARNISHMENT

THIS MATTER IS BEFORE THE COURT on the Answer of Elite Home Health Care, Inc., as the Garnishee. On November 28, 2017, the Honorable Max O. Cogburn, Jr., sentenced the Defendant to six months' incarceration for his conviction of health care fraud and aiding and abetting the same in violation of 18 U.S.C. §§ 1347 and 2. Judgment in the criminal case was filed on December 14, 2017 (Doc. No. 21). As part of that Judgment, the Defendant was ordered to pay an assessment of \$100.00 and restitution in the amount of \$121,546.00 to the victim of the crime.

Id.

On February 11, 2019, the Court entered a Writ of Continuing Garnishment (“Writ”) (Doc. No. 26) to the Garnishee, Elite Home Health Care, Inc. The Defendant and the Garnishee were individually served with the Writ on February 15, 2019. The Garnishee filed an Answer on May 1, 2019 (Doc. No. 29) stating that at the time of the service of the Writ, the Garnishee had in its custody, control or possession property or funds owned by the Defendant, including non-exempt, disposable earnings. The Defendant did not request a hearing, and the statutory time to do so has elapsed.

IT IS, THEREFORE, ORDERED that an Order of Continuing Garnishment is hereby ENTERED in the amount of \$120,496.00 computed through January 23, 2019. The Garnishee will pay the United States the lesser of (1) up to twenty-five percent of the Defendant's disposable earnings which remain after all deductions required by law have been withheld, or (2) the amount by which the Defendant's disposable earnings for each week exceed 30 times the federal minimum wage, as well as one hundred percent of all 1099 payments. *See* 15 U.S.C. § 1673(a). The Garnishee will continue payments until the debt to the Plaintiff is paid in full, or until the Garnishee no longer has custody, possession or control of any property belonging to the Defendant, or until further Order of this Court.

Payments should be made payable to the United States Clerk of Court and mailed to:

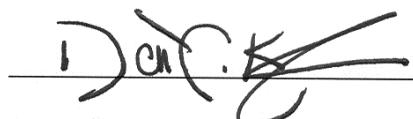
Clerk of the United States District Court
401 West Trade Street
Charlotte, North Carolina 28202

In order to ensure that each payment is credited properly, the following should be included on each check: Court Number DNCW3:17CR161.

IT IS FURTHER ORDERED that the Garnishee will advise this Court if the Defendant's employment is terminated at any time by the Garnishee or the Defendant.

The Plaintiff will submit this debt to the Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the Defendant would normally receive may be offset and applied to this debt.

Signed: September 22, 2020



David C. Keesler
United States Magistrate Judge

